

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH

Petitioner,

v.

BOLDEN 2000 TOURS, INC.

Respondent

Case No.: I-00-11232

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11232) served September 25 2001, the Government charged Respondent Bolden 2000 Tours, Inc. with a violation of 20 DCMR 900.1 which prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notice of Infraction charged that Respondent violated 20 DCMR 900.1 on September 23, 2001 while parked in the 1400 Block of C Street, N.E., and sought a fine of \$500.

On October 10, 2001, this administrative court received Respondent’s plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2) through its owner, James L. Bolden, Sr., along with a request for a reduction or suspension of the authorized fine. In the letter accompanying its plea, Respondent explained that its bus was chartered by Lane C.M.E. Church to pick up a group of 32 passengers who Respondent described as “mostly seniors and

some had to be assisted on the bus.” Respondent stated that, during this process, its bus engine was running, along with the air-conditioning “because it was a very warm day.” Respondent, who described himself as “well-versed on the rules and regulations of the Department of Transportation” stated that the loading procedure took no more than four minutes and that, “[i]t was not my intention to break any rules; I was only trying to do my job, with the welfare of my customers as my priority.”

By order dated October 12, 2001, I permitted the Government an opportunity to respond to Respondent’s plea and request for a reduction or suspension of the authorized fine. The Government opposed Respondent’s request on the grounds that the charging inspector observed Respondent’s bus idling for eight (8) minutes; there is no air conditioning exemption to the proscriptions of § 900.1; and, given Respondent’s professed knowledge of applicable regulations, any reduction or suspension would be inappropriate.

## **II. Findings of Fact**

1. By its plea of Admit with Explanation, Respondent Bolden 2000 Tours, Inc. has admitted violating 20 DCMR 900.1 on September 23, 2001 in the 1400 Block of C Street, N.E.
2. On September 23, 2001, Respondent idled the engine of its truck for more than three (3) minutes while parked in the 1400 Block of C Street, N.E.
3. At the time of the violation, Respondent’s bus has been chartered by Lane C.M.E. Church to pick up a group of 32 passengers, the majority of whom were seniors

and required some assistance in getting on the bus. While assisting the passengers on the bus, Respondent left its engine and air-conditioning system running.

4. Respondent has accepted responsibility for its unlawful conduct.
5. There is no evidence in the record of a past history of non-compliance by Respondent.
6. Respondent has requested a reduction or suspension of the authorized fine. The Government has opposed Respondent's request based on the length of time the charging inspector observed Respondent idling its engine, the lack of an air conditioning exemption to the proscriptions set forth in § 900.1, and Respondent's professed knowledge of applicable regulations.

### **III. Conclusions of Law**

1. Respondent violated 20 DCMR 900.1 on September 23, 2001 in the 1400 Block of C Street, N.E. A fine of \$500 is authorized for a first offense of this violation. 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa).
2. Respondent has requested a reduction or suspension of the authorized fine. Under these circumstances, a reduction, but not a suspension, of the fine is appropriate. Respondent's tacit assertion that it may have been appropriate to idle its engine in order to run the air conditioning system is, as correctly noted by the Government, simply incorrect as a matter of law. *See* D.C. Law 13-35, Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, Section 4 (effective October 7, 1999) (specifically removing bus air conditioning exemption in §

900.1). And while this administrative court credits Respondent's stated concern for the safe loading of its passengers onto the bus, there is nothing in the record to suggest that that safety could not have been maintained without the engine idling – particularly if, as asserted by Respondent, the loading process took four minutes.

3. Because Respondent has accepted responsibility for its unlawful conduct and there is no evidence in the record of a history of non-compliance, however, I will reduce the fine to \$325.<sup>1</sup> See D.C. Official Code § 2-1802.02(a)(2); U.S.S.G. § 3E1.1; 18 U.S.C. § 3553.

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine in the total amount of **THREE HUNDRED TWENTY-FIVE DOLLARS (\$325)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

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<sup>1</sup> Although the Government's reference to Respondent's professed knowledge of applicable regulations might give rise to a finding of an aggravating factor of willfulness that can offset some or all of the mitigating factors referenced herein, on this record, I conclude that there is an insufficient basis for such a finding. See, e.g., *DOH v. Hughes Child Development Center*, OAH No. I-00-40923 at 4 (Final Order, January 30, 2002) (utilizing aggravating and mitigating factors analysis in determining appropriateness of reduction of authorized fine).

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED**                      **05/25/02**

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Mark D. Poindexter  
Administrative Judge